

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD MACIAS,) NO. CV 10-1528-RSWL(E)
Petitioner,)
v.) ORDER OF DISMISSAL
GEORGE A. NEOTTI, Warden,)
Respondent.)

)

Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" on March 2, 2010. The Petition challenges the criminal judgment in Los Angeles Superior Court case number VA-097246 (Petition at 2, 5; Attachment to Petition). Petitioner previously challenged this same judgment in a prior habeas corpus petition filed in this Court. See Macias v. Evans, CV 08-08161-RSWL(E). On June 12, 2009, this Court entered Judgment in Macias v. Evans, CV 08-08161-RSWL(E), denying and dismissing the prior petition on the merits with prejudice.

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1 The Court must dismiss the present Petition in accordance with
2 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and
3 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
4 a petitioner seeking to file a "second or successive" habeas petition
5 first obtain authorization from the court of appeals. See Burton v.
6 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
7 authorization from Court of Appeal before filing second or successive
8 petition, "the District Court was without jurisdiction to entertain
9 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
10 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
11 requires the permission of the court of appeals before 'a second or
12 successive habeas application under § 2254' may be commenced"). A
13 petition need not be repetitive to be "second or successive," within
14 the meaning of 28 U.S.C. section 2244(b). See, e.g., Calbert v.
15 Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008); Miles v.
16 Mendoza-Powers, 2007 WL 4523987, at *2-3 (E.D. Cal. Dec. 19, 2007).
17 Petitioner evidently has not yet obtained authorization from the Ninth
18 Circuit Court of Appeals. Consequently, this Court cannot entertain
19 the present Petition. See Burton v. Stewart, 549 U.S. at 157.

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1 For all of the foregoing reasons, the Petition is denied and
2 dismissed without prejudice.¹

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: 3-05-10.

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8 RONALD S.W. LEW

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10 RONALD S. W. LEW
SENIOR UNITED STATES DISTRICT JUDGE

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14 PRESENTED this 3rd day of
15 March, 2010, by:

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CHARLES F. EICK
18 UNITED STATES MAGISTRATE JUDGE

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27 ¹ In view of this disposition, Petitioner's request for
the appointment of counsel is denied. See Knaubert v. Goldsmith,
28 791 F.2d 722, 728-29 (9th Cir.), cert. denied, 479 U.S. 867
(1986).